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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 GREGORY J. STARK,

8 Plaintiff,

9 v.

10 MARKEL AMERICAN INSURANCE
11 COMPANY, *et al.*,

12 Defendants.

Case No. C17-1498RSM

ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEY FEES

13 This matter comes before the Court on Plaintiff Gregory Stark's Motion for Attorney's
14 Fees, Dkt. #20, submitted pursuant to the Court's November 7, 2017, Order awarding fees and
15 costs under 28 U.S.C. § 1447(c). Dkt. #19 at 7. Mr. Stark requests \$16,009 in fees "for work
16 spent briefing the Motion to Remand [in this case], opposing Markel American's Counter
17 Motion [in the parallel action, Case No. 17-1345-RSM], and preparing this supplemental
18 motion." Dkt #20 at 1. Defendant Defendant Markel American Insurance Company
19 ("Markel") opposes this Motion. Dkt. #23.

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22 28 U.S.C. § 1447(c) states that the Court may award payment of "just costs and any
23 actual expenses, including attorney fees, incurred as a result of the removal." District courts
24 have broad discretion to determine the reasonableness of fees. *Gates v. Deukmejian*, 987 F.2d
25 1392, 1398 (9th Cir. 1992). To make this determination, courts determine the "lodestar
26 amount," which is calculated by multiplying the number of hours reasonably expended by a
27 reasonable hourly rate. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008).
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1 The lodestar figure is presumptively a reasonable fee award. *Id.* at 977. The court may adjust
2 the lodestar figure up or down based upon the factors listed in *Kerr v. Screen Extras Guild,*
3 *Inc.*, 526 F.2d 67, 70 (9th Cir.1975). The court need not consider the *Kerr* factors, however,
4 unless necessary to support the reasonableness of the fee award. *Cairns v. Franklin Mint Co.*,
5 292 F.3d 1139, 1158 (9th Cir. 2002).¹ In the Ninth Circuit, “the determination of a reasonable
6 hourly rate ‘is not made by reference to the rates actually charged the prevailing party.’” *Welch*
7 *v. Metro. Life Ins. Co.*, 480 F.3d 942, 946 (9th Cir. 2007) (quoting *Mendenhall v. Nat’l Transp.*
8 *Safety Bd.*, 213 F.3d 464, 471 (9th Cir. 2000)). “Rather, billing rates should be established by
9 reference to the fees that private attorneys of an ability and reputation comparable to that of
10 prevailing counsel charge their paying clients for legal work of similar complexity.” *Id.*
11 (internal quotation omitted). “Affidavits of the plaintiffs’ attorney and other attorneys
12 regarding prevailing fees in the community, and rate determinations in other cases, particularly
13 those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the prevailing market
14 rate.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).
15 “The party seeking fees bears the burden of documenting the hours expended in the litigation
16 and must submit evidence supporting those hours...” *Welch*, 480 F.3d at 945-46 (citing
17 *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). The district court “should exclude any hours
18 ‘that are excessive, redundant, or otherwise unnecessary.’” *McCown v. City of Fontana*, 565
19 F.3d 1097, 1102 (9th Cir. 2009) (quoting *Hensley*, 461 U.S. at 434).

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24 The Court will first address the hourly rate. The Court finds that Mr. Stark’s requested
25 rates of \$475 for lead counsel Jack Zahner and \$320 for associate Adrienne McKelvey are
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28 ¹ Additionally, numerous courts have subsequently held that the bulk of these factors are subsumed in the lodestar calculation. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 898-900, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984).

1 reasonable, based on the experience, skill, and education of each attorney, and supported with
2 citations to relevant cases where similar billing rates were awarded. *See* Dkt. #20 at 3.

3 The Court next turns to the hours requested. The Court finds that it may only award
4 Mr. Stark reasonable fees for time spent briefing the Motion to Remand in this case and not for
5 opposing Markel's Counter Motion in the parallel case. *See* 28 U.S.C. § 1447(c). As is its
6 typical practice, the Court declines to award fees for time spent preparing the instant Motion.
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8 The Court has reviewed the specific billing entries² and finds that the hours spent
9 researching the issues in this case and drafting the briefing related to the Motion to Remand are
10 reasonable. The Court will not award fees for entries related to opposing the Counter Motion,
11 and calculates those hours at 4.8 hours billed at \$320 and 0.9 hours billed at \$475. The Court
12 will not award the 5.8 hours billed at \$320 related to the instant motion. Subtracting these
13 amounts from the bill, the Court calculates the total award at \$12,190.
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15 Having reviewed the relevant briefing, the declarations and exhibits attached thereto,
16 and the remainder of the record, the Court hereby finds and ORDERS that Plaintiff Stark's
17 Motion for Attorney's Fees, Dkt. #20, is GRANTED IN PART as stated above. Defendant
18 Markel shall pay Plaintiff \$12,190 in attorney's fees within twenty-one (21) days of this Order.
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20 DATED this 12th day of December, 2017.
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24 RICARDO S. MARTINEZ
25 CHIEF UNITED STATES DISTRICT JUDGE
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28 ² The Court notes that the record of attorney hours submitted by Mr. Stark is difficult to follow because there are no dates for the billing entries. *See* Dkt. #21 at 4-5. In the future, the Court advises Mr. Stark's attorneys to submit billing records with dates to avoid confusion and the potential denial of such a motion in its entirety.